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**FILED**  
DISTRICT COURT OF GUAM

JUN 27 2006 *hba*

MARY L.M. MORAN  
CLERK OF COURT

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF GUAM

9 ELIZABETH TOLOSA-TAHA ) CIVIL CASE NO. 06-00002  
10 )  
11 Plaintiff, )  
vs. )  
12 ) OPPOSITION TO PLAINTIFF'S  
NILOOBAN, NILO ) MOTION TO AMEND THE PLEADINGS  
13 NILOOBAN, THE TESTATE AND ) TO NAME PARTY PLAINTIFF,  
INTESTATE SUCCESSORS OF EDGAR ) ELIZABETH TOLOSA-TAHA IN HER  
14 G.M. TOLOSA, DECEASED, AND ALL ) CAPACITY AS REPRESENTATIVE OF  
PERSONS CLAIMING BY, THROUGH ) THE ESTATE OF EDGAR TOLOSA-  
15 OR UNDER SUCH EDGAR G.M.) TAHA PURSUANT TO RULE 7.1(A);  
TOLOSA; ALL PERSONS UNKNOWN,) CERTIFICATE OF SERVICE  
16 CLAIMING ANY LEGAL OR EQUITABLE)  
RIGHT, TITLE, ESTATE, LIEN, OR)  
INTEREST IN THE PROPERTY)  
DESCRIBED IN THE COMPLAINT)  
ADVERSE TO PLAINTIFF'S TITLE, OR)  
ANY CLOUD ON PLAINTIFF'S TITLE)  
THERETO; AND DOES 1 to 50,)  
INCLUSIVE, )  
17 )  
Defendants. )  
21 )

22 INTRODUCTION

23 What the Plaintiff has failed to realize is that amending her pleadings would be  
24 futile because she still would not have title under her name. No one disputes that title to  
25 the disputed real property is under the Estate's name. So, if the Plaintiff sues as the

1 ORIGINAL

1 personal representative of the Estate of Edgar G.M. Tolosa ("Estate"), that does nothing  
2 to assist her in having quiet title. Even though the Plaintiff may have filed suit on behalf of  
3 the Estate to sue the City of Oakland, there was no judicial adjudication the Plaintiff is the  
4 sole heir to the Estate to have standing to bring this suit.

5

6                   **MEMORANDUM OF POINTS AND AUTHORITIES**

7                   **I. LEAVE TO AMEND SHOULD BE DENIED BECAUSE THE PROPOSED**  
8                   **AMENDMENT IS FUTILE AND WOULD BE SUBJECT TO DISMISSAL.**

9                   The Plaintiff's theory that she has standing to sue for quiet title lacks any legal  
10 foundation and it is clear that the proposed amendment does not correct the defect.  
11 Therefore, the Court has discretion to deny the Motion to Amend. Johnson v. Dist. 2  
12 Marine Eng. Beneficial Association, 857 F.2d 514 (9<sup>th</sup> Cir. 1988). In realizing the Plaintiff  
13 lacks standing to sue for quiet title (because no probate court has administered the  
14 Estate), she is now requesting the Court to permit herself to sue on behalf of the Estate.  
15 The proposed amendment would not cure the Plaintiff's deficiency in standing to sue for  
16 quiet title. Should the Estate prevail, title would belong to the Estate, not the Plaintiff. For  
17 the Plaintiff to sue for quiet title in her name, a court must adjudge her as an heir to the  
18 Estate. That has not happened here.

19                   //

20                   //

1       The Plaintiff is praying to the Court to adjudge her as the sole heir to the Estate.  
2 See, Proposed Second Amended Complaint for Quiet Title.<sup>1</sup> What the Plaintiff needs to  
3 do is open probate of the Estate so that a probate court can determine who is the lawful  
4 heir or heirs to the Estate. Since the decedent's property is situated in Guam, the  
5 Superior Court of Guam has exclusive jurisdiction for the probate of the Estate:

6       **Probation Jurisdiction in Superior Court of Guam.** Wills must  
7 be proved, and letters testamentary, letters of administration with  
8 the will annexed, letters of administration or special letters of  
administration granted, and administration of estates of decedents  
had, in the Superior Court of Guam.

9       15 G.C.A. §1403.

10       Federal courts do not have jurisdiction to administer an estate. Although federal  
11 courts have jurisdiction to address suits in favor of creditors and heirs and other claims  
12 against a decedent's estate to establish their claims, this is permitted so long as the  
13 federal court does not "interfere with the probate proceedings" or assume general  
14 jurisdiction of the probate or control of the property in the custody of the state court.

15       Markham v. Allen, 326 U.S. 404, 494 (1946). If the Plaintiff seeks to have her adjudged  
16 as the sole heir, she must open probate of the Estate in the local courts of Guam.

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21       <sup>1</sup> Apparently the Plaintiff is not following the rules of civil procedure and is misleading the Court in what  
22 are the proposed amendments to the Second Amended Complaint. In her motion to amend her  
Amended Complaint, the Plaintiff states that she is only seeking to amend the pleadings to name her as  
the personal representative of the Estate. But the Plaintiff fails to advise the Court that there are other  
numerous changes to the Proposed Second Amended Complaint, which significantly differs from the  
Amended Complaint. The Plaintiff is requesting the Court to adjudge her as the sole heir to the  
property in question. See, Prayer of Proposed Second Amended Complaint, attached hereto as Exhibit  
"A". The Plaintiff includes a new named Defendant, Bienvenido Nilooban. Id., at ¶3. The Plaintiff  
alleges the Niloobans are acting as owners of the property. Id., at ¶4-5. The Plaintiff alleges other  
unknown heirs as Defendants. Id., at ¶6. The Plaintiff needs to disclose what are her proposed  
amendments. Her arguments in her present motion contradict her proposed Second Amended  
Complaint.

1        Thereafter, once Guam probate court adjudges the Plaintiff as an heir, then she  
2 can sue for quiet title. The Plaintiff has completely avoided this requisite procedure, opted  
3 to walk into federal court and sue everyone for quiet title.

4        Then, to support her position, the Plaintiff argues that since she sued on behalf of  
5 the Estate in California, she has been adjudged as the sole heir to the Estate. Nothing is  
6 further from the truth. Assuming the Plaintiff filed suit on behalf of the Estate in a wrongful  
7 death case, so what? California's Wrongful Death statute does not give the Plaintiff title to  
8 the Estate's property. The statute permits an heir to act as representative of the Estate to  
9 continue a lawsuit. California Code of Civil Procedure, 377.60(a). Nowhere in California's  
10 Wrongful Death statute (which, of course, does not apply in this case at all), does the  
11 statute provide that any heir who continues or files a lawsuit on behalf of the decedent is  
12 the sole and lawful heir of the Estate. Recovery in a wrongful death case does not  
13 constitute a court (or even a Guam probate court for that matter) adjudicating the Plaintiff  
14 as an heir.  
15

16        **II. THERE IS NO DISPUTE BETWEEN THE PLAINTIFF AND THE  
17 DEFENDANTS AND THE AMOUNT IN CONTROVERSY DOES NOT  
18 REACH \$75,000.00.**

19        Nowhere have the Defendants ever disputed or opposed the Estate having title to  
20 the property. In fact, Defendant NILOOBAN acknowledged all along that the Estate  
21 owned the property. However, the Plaintiff is somehow under the impression the  
22 Defendants claims title by residing on the property. This is far from the truth.

23        Nevertheless, since the Defendants do not dispute ownership of the property in the  
24 name of the Estate, the only dispute that exists here is the amount of rent. The disputed  
25 rent is approximately \$12,000.00. See, Exhibit "A". Even assuming the Plaintiffs

1 calculations of rent is accurate, this fails to meet the "amount in controversy" of  
2 \$75,000.00.

## **CONCLUSION**

5           Permitting the Plaintiff to amend her pleadings to name her as the personal  
6 representative of the Estate is not going to help the Plaintiff's suit for quiet title. If the  
7 Plaintiff wants to have quiet title under her name, probate must be opened or the  
8 administration of the decedent's Estate must be completed.

9 The Plaintiff has failed to open probate of the decedent's Estate. No court has  
10 adjudged the Plaintiff as an heir to the real property at issue. Further, should the Court  
11 permit the Plaintiff to amend her pleadings to name her as the personal representative of  
12 the Estate, title will belong to the Estate. The appearing Defendants has not disputed that  
13 the Estate has title to the property.

14       Lastly, even if the Plaintiff is permitted to be the personal representative of the  
15 Estate, the amount in controversy requirement does not satisfy the \$75,000.00  
16 requirement. If at all any controversy exists between the Plaintiff and the Defendants, it is  
17 only in the amount of approximately \$12,000.00. Therefore, since the proposed  
18 amendment is futile, the Court should deny the Plaintiff's motion.

19 ||| Respectfully submitted this 27<sup>th</sup> day of June, 2006.

**MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
Attorneys for Defendant  
**MILAROSE NILOOBAN**

By:

~~LOUIE J. YANZA~~

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2                   **CERTIFICATE OF SERVICE**  
3  
4

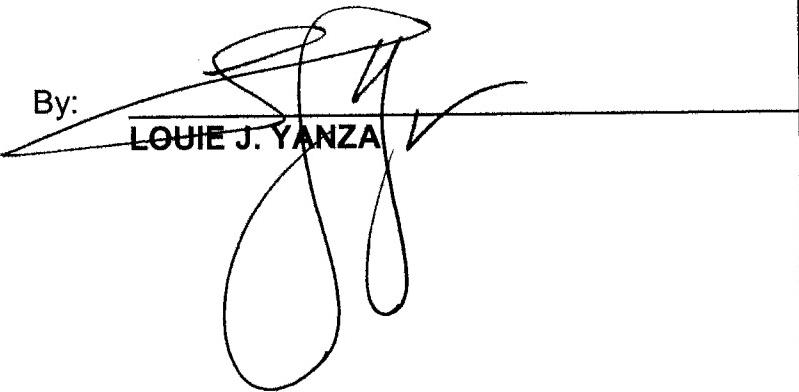
5                   I, LOUIE J. YANZA, hereby certify that on the 27<sup>th</sup> day of June, 2006, I caused  
6 a copy of the annexed **OPPOSITION TO PLAINTIFF'S MOTION TO AMEND THE**  
7 **PLEADINGS TO NAME PARTY PLAINTIFF, ELIZABETH TOLOSA-TAHА IN HER**  
8 **CAPACITY AS REPRESENTATIVE OF THE ESTATE OF EDGAR TOLOSA-TAHА**  
9 **PURSUANT TO RULE 7.1(A); CERTIFICATE OF SERVICE**, to be served upon the  
10 parties hereto, by either delivering, faxing and/or mailing a copy of same to their attorney  
11 of record, as follows:

12  
13                   **Gerald E. Gray, Esq.**  
14                   213 E Buena Vista Avenue, Suite 202  
15                   Dededo, Guam 96929-5321  
16                   **Counsel for Plaintiff Elizabeth Tolosa-Taha**

17  
18                   Dated this 27<sup>th</sup> day of June, 2006.  
19  
20

21                   **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
22                   Attorneys for Defendant  
23                   **MILAROSE NILOOBAN**

24                   By:  
25

  
LOUIE J. YANZA